

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 10 - General

Further amendments and repeals

Section 114 and Schedules 18 and 19: Further minor and consequential amendments and repeals

635. *Section 114 and Schedules 18 and 19* make amendments and repeals consequential on the provisions of the Act.

Orders

Section 115: Orders: general

636. *Section 115* provides that the Treasury is to exercise their order-making powers in the Act by statutory instrument.

Section 116: Orders: Parliamentary control

637. *Section 116* sets out the Parliamentary procedure that is to apply to statutory instruments made under the Act.

Interpretation

Section 117: Interpretation

638. *Section 117* sets out definitions of some terms used in the Act.

Consequential and transitional provisions

Section 118: Power to make further consequential amendments etc.

639. *Section 118* provides for amendments to be made to legislation which are consequential on the provisions of the Act, or on provisions made under it, by order made by the Treasury or the Secretary of State. The order may amend, repeal, revoke or apply legislation with modifications where the Treasury or the Secretary of State considers it necessary or expedient to do so. Orders may only amend legislation passed or made before the passing of the Act, or on or before the last day of the Parliamentary Session in which the Act is passed.

Section 119 and Schedules 20 and 21: Transitional provisions and savings

640. *Section 119* introduces *Schedules 20 and 21* and provides for transitional and saving provisions to be made by the Treasury by order. For example, an order might make provision for the continuation of legal or disciplinary proceedings instituted by the FSA

and which are in train at the time that the Act comes into effect and the FCA and PRA take up their functions.

641. *Schedule 20* makes transitional provision in relation to various matters including the interpretation of references to the FSA in documents such as contracts, and the ability for the FCA and the PRA to rely on consultation undertaken by the FSA, the Bank or both before commencement of the relevant provisions in the Act or before Royal Assent, for example consultation on rules or consultation on a statement of policy in connection with the first order made under section 22A to designate activities as PRA-regulated activities.
642. *Part 1 of Schedule 21* provides that the FSA must make one or more transfer schemes for the transfer of property, rights and liabilities to the PRA and the Bank, subject to the Treasury's approval of the scheme. An FSA scheme could, for example, provide that contractual rights currently exercisable by the FSA are to be exercisable by each of the FCA and the PRA. Where a scheme provides for the transfer of staff, it must provide for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply as if the transfer were a relevant transfer for the purposes of those Regulations; and the FSA scheme could provide for employees to transfer from the FSA to the Bank in connection with functions which transfer from the FSA to the PRA. A transfer scheme could make provision in relation to functions transferred by the Act or under it, such as by an order under *section 50* (mutual societies).
643. *Part 2 of Schedule 21* provides that if the Treasury makes an order specifying that an activity or activities regulated under the Consumer Credit Act 1974 are to instead become regulated activities for the purposes of FSMA, the OFT must make one or more transfer schemes for the transfer of property, rights and liabilities to the FCA. The approval of both the Treasury and the Secretary of State is needed for an OFT scheme. As with an FSA scheme, an OFT scheme could be used to transfer contractual rights and, if it provides for the transfer of staff, must provide for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply as if the transfer were a relevant transfer for the purposes of those Regulations.

Final provisions

Section 120: Financial provision

644. *Section 120* contains financial provisions.

Section 121: Extent

645. The Act extends to the whole of the United Kingdom.

Section 122: Commencement

646. *Section 122* provides for the coming into force of the Act. See the section headed "Commencement", below.

Section 123: Short title

647. The short title of the Act is the Financial Services Act 2012.